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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/524,929

**Applicant(s)**

OPITZ ET AL.

**Examiner**

Alissa L. Hoey

**Art Unit**

3765

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 47-55 and 58-96 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 47-55 and 59-96 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. This is in response to amendment received on 01/30/08. Claims 47-55 and 58-96 are examined below.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 47, 48, 50-55, 58-62, 64, 68, 69, 86-92 and 96 are rejected under 35 U.S.C. 102(a) as being anticipated by Rindle (US 2003/0172435).

Rindle teaches the following:

47. (new) A garment, comprising a main fastening device (11c) and a supplementary fastening device (paragraph 0023), wherein the main fastening

device (11c) detachably joins mutually opposing garment edges of two garment

pieces comprised of garment material and has two mutually opposing

side stringers (11c), each having a first longitudinal side provided with closing

links and a second longitudinal side joined to an associated garment

edge, the second longitudinal side of at least one of the two side

stringers of the main fastening device is joined to the associated garment

edge via a ventilating material (11d, 11e) forming a ventilating means, so that the

inner side of the garment is accessible to ventilating air even when the

main fastening device is closed (figures 1-4),  
and wherein further the supplementary fastening device (3) is  
designed as a covering strip, which is movable, in relation to the main  
fastening device (11c), between a closed position, in which it covers at least  
part of the ventilating material, and an open position, in which it exposes  
at least part of the ventilating material (paragraph 0041-0042 and figures 1-4).

48.(new) The garment of claim 47 wherein the covering strip (1) is a one-piece  
design which completely covers the ventilating material in the closed position and, in the  
open position, completely exposes the ventilating material (see figure 4).

50. (new) The garment of claim 47 wherein the covering strip (1) covers the  
ventilating material on the outer side of the garment (see figure 4).

51.(new) The garment of claim 47 wherein the ventilating material comprises  
an air-permeable textile fabric (paragraph 0040-0042).

52.(new) The garment of claim 51 wherein the ventilating material comprises  
net or mesh-like material (paragraph 0040-0042).

53. (new) The garment of claim 47 wherein the ventilating material has an air  
permeability value of at least 30 l/m<sup>2</sup>/s (see aperture opening in mesh).

54. (new) The garment of claim 47 wherein the covering strip (1) has a fixed  
covering strip side, which is fastened next to a first side of the main fastening device on  
an outer material of the garment, and a free covering strip side, so that the covering  
strip pivots about its fixed covering strip side between the open position and the closed  
position (figure 4, identifiers 19, 9).

55. (new) The garment of claim 54 wherein the covering strip (1) is substantially parallel to the main fastening device (11c), and wherein the fixed covering strip side and the free covering strip side are formed on the covering strip longitudinal side, and the fixed covering strip longitudinal side is fastened adjacent to a first longitudinal side of the main fastening device on the outer material of the garment (figure 4, identifiers 19, 9).

58. (new) The garment of claim 47 wherein the main fastening device is selected from the group comprising a zip fastener, a hook-and-loop fastener, a magnetic fastener and a press-stud fastener (paragraph 0034).

59. (new) The garment of claim 58 wherein the main fastening means is a zip fastener, and wherein the side stringers of the main fastening means comprise two zip fastener side stringers each having a first longitudinal side, provided with a row of closing links, and a second longitudinal side joined to an associated garment edge (11c).

60.(new) The garment of claim 47 wherein the main fastening device is provided for the detachable fastening of a front opening of a garment in the form of a jacket or coat (figures 1-4).

61.(new) The garment of claim 47 wherein the main fastening (11c) device is provided for the detachable joining of two garment pieces which can be placed against each other (figures 1-4).

62. (new) The garment of claim 47 further comprising an intermediate strip (19) which extends parallel to the covering strip (1) and, in a closed state, is located between

the main fastening device (11c) and the covering strip (1) and, in an open state, exposes at least part of the ventilating material (11e, 11d: figure 4).

64. (new) The garment of claim 62, wherein the intermediate strip (19) is a multi-piece design and the individual strip parts (19, 19, 19, 19) move independent of each other into an open position, in which they each expose an assigned part of the ventilating material (figure 4).

68. (new) The garment of claim 47 wherein the covering strip (1) comprises a covering strip inner part, a covering strip outer part and a covering strip end region located in the region of the fixed strip side (figure 4, identifiers 1, 19, 9, 11a).

69.(new) The garment of claim 62 wherein the intermediate strip (19) has an intermediate strip inner part, an intermediate strip outer part and an intermediate strip end region, which is located in the region of the fixed strip side (19, 9).

86. (new) The garment of claim 47 further comprising a ventilation restricting means (19) which is arranged parallel to the ventilating material (11e, 11d) and which moves selectively into either a restricting position to cover at least a partial region of the ventilating material thereby restricting the ventilating performance of the ventilating material, or a release position, to expose the ventilating material (figure 4, identifiers 9, 19).

87. (new) The garment of claim 86 wherein the ventilation restricting means (19) comprises a restricting strip arranged between the ventilating material (11e, 11d) and the covering strip (1) and wherein the restricting strip moves in relation to the ventilating material between a closed position, in which it covers at least part of the ventilating

material, and an open position, in which it exposes at least part of the ventilating material, the restricting strip being made up of a ventilation restricting material which has an air permeability value which is lower than the air permeability value of the ventilating material (figure 4, paragraph 0050).

88. (new) The garment of claim 86 wherein the ventilation restricting means (19) comprises a restricting strip which is arranged between the ventilating relation to the ventilating material between a closed position, in which it covers at least part of the ventilating material, and an open position, in which it exposes at least part of the ventilating material, the restricting strip comprises a ventilation restricting material which has an air permeability value which is lower than the air permeability value of the ventilating material (figure 4, paragraph 0050).

89.(new) The garment of claim 87 wherein the ventilation restricting material has a minimum air permeability value in the range from approximately 30 l/m<sup>2</sup>/s to 40 l/m<sup>2</sup>/s (depending upon air speed and type of air).

90.(new) The garment of claim 88 wherein the ventilation restricting material has a minimum air permeability value in the range from approximately 30 l/m<sup>2</sup>/s to 40 l/m<sup>2</sup>/s (depending upon air speed and type of air).

91.(new) The garment of claim 47 wherein the ventilating means additionally has at least one device selected from the group comprising a pocket, a main fastening means and light-reflecting means (figures1, identifiers 14, 16).

92. (new) A garment module comprising two module side edges which are joined to two mutually opposing edges of two garment pieces made up of garment material,

wherein the garment module has a main fastening device (11c) with two mutually opposing fastening sides which can be joined to each other in a detachable way and which each have a first longitudinal side provided with closing links and a second longitudinal side; and wherein further the second longitudinal side of at least one of the two side stringers of the main fastening device has attached thereto a ventilating material forming a ventilating means (11e, 11d), by means of which the module is permeable to ventilating air even when the main fastening device is closed; and wherein yet further the module has arranged thereon a supplementary fastening device in the form of a covering strip (1), which moves in relation to the main fastening device between a closed position, in which it covers at least part of the ventilating material, and an open position, in which it exposes at least part of the ventilating material (figures 1-4).

96. (new) The module of claim 92 wherein the main fastening device is a zip fastener (11c), and wherein the side stringers of the main fastening means are formed by two zip fastener side stringers, and wherein further the ventilating material is attached on the second longitudinal side of at least one of the two side stringers (11c).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



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5. Claims 47, 49, 63, 65-67, 70-85 and 92-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auman (US 5,159,719) in view of Fujisawa (JP 11346810A).

Auman teaches the following:

47 (new) A garment, comprising a main fastening device and a supplementary fastening device, wherein the main fastening device detachably joins mutually opposing garment edges of two garment pieces comprised of garment material and has two mutually opposing side stringers, each having a first longitudinal side provided with closing links and a second longitudinal side joined to an associated garment edge, the second longitudinal side of at least one of the two side stringers of the main fastening device is joined to the associated garment edge (figure 2).

However, Auman fails to teach the side stringers attached to the garment via a ventilating material forming a ventilating means, so that the inner side of the garment is accessible to ventilating air even when the main fastening device is closed, and wherein further the supplementary fastening device is designed as a covering strip, which is movable, in relation to the main fastening device, between a closed position, in which it covers at least part of the ventilating material, and an open position, in which it exposes at least part of the ventilating material.

Fujisawa teaches the two side stringers having ventilation means (figure 1, indenter 40).

49. (new) The garment of claim 47 wherein the covering strip (16a, 61, 41) is a

multi-piece design comprising individual strip parts which move independent of each other into a closed position to cover a part of the ventilating material, and move independent of each other into an open position to expose a part of the ventilating material, wherein the ventilating performance depends on how many of the strip parts are in the open position (figure 2).

56. (new) The garment of claim 47 wherein the garment material and the covering strip are waterproof and wherein the covering strip is fastened on the garment material in a waterproof manner (16a, 61a and 73a).

57. (new) The garment of claim 56 wherein the garment, including the covering strip, is made up of water-permeable and air-permeable material and further comprises a waterproof functional layer (column 5, lines 34-48).

63. (new) The garment of claim 62 wherein the intermediate strip is a one-piece design and, in the open position, completely exposes the stringer material (figure 2)

Fujisawa teaches the string material having ventilation means (40).

65. (new) The garment of claim 64, wherein the intermediate strip is waterproof (column 5, lines 20-48).

66. (new) The garment of claim 62, wherein the intermediate strip (63a, 45a) has a fixed intermediate strip side (43), which is fastened in a waterproof manner on the outer material of the garment on a second side of the main fastening device (71b, 73b), lying on the opposite side of the first side of the main fastening device, and a free intermediate strip side (65), the intermediate strip being adapted to pivot about its fixed intermediate strip side (figure 2).

67. (new) The garment of claim 62, wherein the intermediate strip (63a, 45a) runs substantially parallel to the main fastening means (15), and comprises a fixed intermediate strip side (43) and a free intermediate strip side (65) which are each formed by an intermediate strip longitudinal side, and the fixed intermediate strip side is fastened next to a second longitudinal side of the main fastening device on the outer material of the garment (figure 2).

70. (new) The garment of claim 68 wherein the covering strip outer part and the covering strip inner part each comprise a textile fabric (16a, 61a), and wherein the textile fabrics are joined to each other on a free covering strip side by a first covering strip seam (39) and in the region of the fixed covering strip side by a second strip seam (31).

71. (new) The garment of claim 69 wherein the intermediate strip outer part and the intermediate strip inner part each comprise a textile fabric (45a, 63a), and wherein the textile fabrics are joined to each other on an intermediate free strip side by a first intermediate strip seam (column 5, lines 37-48) and in the region of the fixed strip side by a second intermediate strip seam (43).

72. (new) The garment of claim 70 wherein the second covering strip seam is waterproof (column 5 lines 20-48).

73. (new) The garment of claim 71 wherein the second intermediate strip seam is waterproof (43, 71b, 73b).

74. (new) The garment of claim 68 wherein the covering strip (16a) has a covering strip intermediate part (61a), which is arranged between the covering strip

inner part and the covering strip outer part and has a first covering strip intermediate part end, which is fastened by means of a covering strip intermediate part seam on the covering strip inner part, and a second covering strip intermediate part end, which is fastened by means of the second covering strip seam on the covering strip outer part (figure 2).

75. (new) The garment of claim 69 wherein the intermediate strip (45a, 63a) has a strip intermediate part, which is arranged between the intermediate strip inner part and the intermediate strip outer part and has a first strip intermediate part end, which is fastened by means of an intermediate strip intermediate part seam on the intermediate strip inner part, and a second intermediate strip intermediate part end, which is fastened by means of the second intermediate strip seam on the intermediate strip outer part (figure 2).

76. (new) The garment of claim 74 wherein the intermediate strip intermediate part comprises a waterproof functional layer (63a).

77. (new) The garment of claim 75 wherein the intermediate strip intermediate part comprises a waterproof functional layer (63a).

78. (new) The garment of claim 57 wherein the functional layer is waterproof and water-vapor-permeable (61a).

79. (new) The garment of claim 78 wherein the functional layer comprises a layer of expanded polytetrafluoroethylene (61a).

80. (new) The garment of claim 74 wherein the covering strip intermediate part seam is a waterproof adhesive seam (73a).

81. (new) The garment of claim 75 wherein the intermediate strip intermediate part seam is a waterproof adhesive seam (73b).

82. (new) The garment of claim 74 wherein the covering strip intermediate part seam is a sewn seam sealed by a waterproof seam sealing tape (73a).

83. (new) The garment of claim 75 wherein the intermediate strip intermediate part seam is a sewn seam sealed by a waterproof seam sealing tape (73b).

84. (new) The garment of claim 70 wherein the second covering strip seam is a sewn seam sealed by a waterproof seam sealing tape (73a).

85. (new) The garment of claim 71 wherein the second intermediate strip seam is a sewn seam sealed by a waterproof seam sealing (73b).

Auman teaches the following except for the ventilation material:

92. (new) A garment module comprising two module side edges which are joined to two mutually opposing edges of two garment pieces made up of garment material, wherein the garment module has a main fastening device with two mutually opposing fastening sides which can be joined to each other in a detachable way and which each have a first longitudinal side provided with closing links and a second longitudinal side; and wherein further the second longitudinal side of at least one of the two side stringers of the main fastening device

However, Auman fails to teach the stringers having attached thereto a ventilating material forming a ventilating means, by means of which the module is permeable to ventilating air even when the main fastening device is closed; and wherein yet further the module has arranged thereon a supplementary fastening device in the form of a covering strip, which moves in relation to the main fastening device between a closed

position, in which it covers at least part of the ventilating material, and an open position, in which it exposes at least part of the ventilating material.

Fujisawa teaches a zipper having ventilation means (40).

93. (new) The module of claim 92 further comprising an intermediate strip which is joined to the main fastening device, the material and the covering strip (figure 2).

94. (new) The module of claim 92, further comprising a ventilation restricting means, which is joined to the main fastening device, the material and the covering strip (figure 2).

95. (new) The module of claim 92, further comprising a ventilation restricting means, which is joined to the main fastening device, the material, the covering strip and the intermediate strip (figure 2).

Fujisawa teaches a zipper having a material with ventilation means (40).

It would have been obvious to have provided the zipper closure of Auman with the ventilated zipper stringers of Fujisawa, since the zipper closure of Auman provided with ventilated zipper strings would provide a waterproof closure and further providing good breathability to the user for added comfort.

#### ***Response to Arguments***

6. Applicant's arguments filed 01/30/08 have been fully considered but they are not persuasive.

I) Applicant argues that Rindle et al. (US 2003/0172435) fails to teach a garment with a ventilating means comprising a main fastening device.

Examiner notes that Rindle et al. teaches a ventilating means (11d, 11e) comprising a main fastening device (11c). The main fastening device is identifier 11c and the supplementary fastening device is identifier 3. As long as Rindle et al. teaches two fastening devices the main fastening device and the supplementary device can be defined as either, because the claims provide no structure detailing the supplementary fastening device from the main fastening device.

II) Applicant argues that Rindle et al. fails to teach the fastening device joining two mutually opposing garment edges of two garment pieces.

Examiner notes that the garment of Rindle et al. encompasses the carrying system. The carrying system is glued, welded or attached by a stitched seam (paragraph 0031) and is therefore part of the garment as a whole. The two opposing edges of the garment carrying system are joined together by fastening means (11c) (paragraph 0030).

III) Applicant argues that Rindle et al. has an inner envelope, not a venting means.

Examiner notes that the inner envelope portion of the garment of Rindle et al. is made out of a ventilated material enabling perspiration to be evacuated (see paragraph 0041). Clearly, a garment portion made out of ventilating material enabling perspiration to be evacuated is a venting means.

IV) Applicant argues that Rindle et al. fails to teach the supplementary fastening device being designed as a covering strip.

Examiner notes that the supplementary fastening device of Rindle (3) is designed as a covering strip since, it can be opened while the main fastening device (11c) is closed to provide increased ventilation to the user's skin and can also be closed to provide less ventilation to the user's skin.

V) Applicant argues that Fujisawa fails to teach side stringers attached to a garment via the ventilation means.

Examiner notes that the above limitation is not what is claimed. What is claimed is a second longitudinal side of a string with an attached thereto ventilation means. Fujisawa teaches a second longitudinal side of a string having attached thereto a ventilation means (see figures). The ventilations means attached to the stringer is the portion of the stringer that has ventilation holes therein.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALH

/Alissa L. Hoey/  
Primary Examiner, Art Unit 3765

